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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,278	07/25/2006	Thomas Kripp	3699	4868

7590
Striker Striker and Stenby
103 East Neck Road
Huntington, NY 11743

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1619

MAIL DATE	DELIVERY MODE
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07/21/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/587,278	Applicant(s) KRIPP ET AL.	
	Examiner JYOTHSNA A. VENKAT	Art Unit 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-38 is/are pending in the application.
- 4a) Of the above claim(s) 19-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/25/06</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt is acknowledged of election filed on 4/21/10 and IDS filed on 7/25/06. Claims 19-38 are pending in the application.

Election/Restrictions

Applicant's election without traverse of group II in the reply filed on 4/21/10 is acknowledged.

Claims 19-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 4/21/10.

Claims 32-38 are currently examined in the application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 32-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 32 lacks clarity and unclear as to applicant's intent. Claim 32 recites two compound of formula I and formula II. Both are drawn to salts. Therefore what is means by salts of formula I and salts of formula II?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 32-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patent 5,133,958 ('958) and U. S. Patent 6,861,077 ('077).

Patent '958 teaches trigonelline for hair loss. Trigonelline is same as compounds drawn to formula I or formula II. Trigonelline is also obtained from extract of plant of the genus *Trigonella foenum graecum* (see col.1, ll 40-46). Thus trigonelline is obtained from plant extract. See page 3, ll, and 11-13 of instant specification. See also col.3, ll 15-19 where in patent teaches trigonelline for progressive hair loss and stimulating fresh hair growth. Thus patent '958 teaches the claimed method of repairing and strengthening and restructuring keratin material. The difference between patent and instant application is patent does not teach trigonelline for topical application and steps b) and c) claimed in the application and does not teach protecting keratin material from mechanical and chemical damage.

Patent '077 teaches plant extracts to protect keratin fibers. Patent '077 at col.1, ll 24-32 teaches that hair is constantly exposed to extrinsic conditions such sun and chemical damage in

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view of detergent, bleaches, relaxing hair, dyeing hair and permanent waving hair. This results in damage to hair and patent teaches restoring and protecting keratin fibers using plant extracts.

Patent at paragraph bridging cols. 3-4 teaches that human hair contains sugars and carbohydrate moieties and patent at col. 4, ll 25-55 teaches that N-acetyl neuraminic acid (NANA) and teaches that NANA is the first constituent exposed to the attack during various hair treatments and at paragraph bridging cols. 4-5 teaches that any plant extracts protect the keratin fiber from protein loss. Patent under example 3 teaches by applying extract solution on hair and left for 5 minutes at room temperature and then rinsing. Thus patent teaches claimed method of contacting keratin material for time period and temperature and rinsing. Patent under example 4 teaches improved combing of bleached hair and under example 5 teaches improved curl formation in the permanent waving of normal and tinted hair (claim 36).

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to use compounds of formula I and II known as Trigonelline for repairing and structuring and strengthening keratin fiber since patent '958 teaches trigonelline for hair loss and use these compounds for protecting the hair from chemical damage by using these compound on hair treated with chemicals like permanent waving agents and hair coloring agents in view of teaching of patent '077 that plant extracts can be applied on hair for protecting the hair. One of ordinary skill in the hair care art would use compounds of formula I and II (also known as trigonelline taught by patent '958 and also obtained from plant extract) with the reasonable expectation of success that trigonelline which is obtained from plant extract can also be applied on hair for protecting hair from chemical damage and also structuring repairing and strengthening hair. This is prima facie case of obviousness.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EYLER YVONNE (BONNIE) can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619